

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
AT&T Broadband	)	
	)	
MediaOne of Massachusetts, Inc.	)	
MediaOne of Enterprises, Inc.	)	
MediaOne Brockton, Inc.	)	
MediaOne of Milton, Inc.	)	File No. CSB-A-0674
MediaOne of Needham, Inc.	)	
MediaOne Ohio, Inc.	)	
MediaOne of Southern New England, Inc.	)	
MediaOne of Virginia, Inc.	)	
MediaOne of Western New England, Inc.	)	
	)	
All d/b/a AT&T Broadband	)	
	)	
Appeal of Local Rate Order of the Massachusetts	)	
Department of Telecommunications and Energy	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 29, 2003**

**Released: June 2, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. On March 29, 2002, MediaOne of Enterprises, Inc., MediaOne of Enterprises, Inc., MediaOne Brockton, Inc., MediaOne of Milton, Inc., MediaOne of Needham, Inc., MediaOne Ohio, Inc., MediaOne of Southern New England, Inc., MediaOne of Virginia, Inc., and MediaOne of Western New England, Inc. d/b/a AT&T filed an appeal of a local rate order adopted by the Massachusetts Department of Telecommunications and Energy (“DTE”).<sup>1</sup> The order held that AT&T had improperly completed FCC Form 1240 (“Form 1240”), especially the treatment of its “true-up” adjustment in computing its basic service tier (“BST”) rate.<sup>2</sup> DTE filed an opposition, to which AT&T replied. We grant AT&T’s appeal.

**II. BACKGROUND**

2. The Communications Act provides that, where effective competition is absent, cable rates for the BST are subject to regulation by franchising authorities.<sup>3</sup> Rates for the BST should not exceed rates

<sup>1</sup> Locally identified as Docket No. CTV 01-1/01-3.

<sup>2</sup> A “true-up” adjustment is an adjustment or correction of projected cost increases from a prior year done in an annual computation of basic service rates by every cable system without effective competition.

<sup>3</sup> 47 U.S.C. § 543(a)(2).

that would be charged by systems facing effective competition, as determined in accordance with Commission regulations for setting rates.<sup>4</sup>

3. Rate orders issued by franchising authorities may be appealed to the Commission pursuant to Commission rules.<sup>5</sup> In ruling on appeals of local rate orders, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as a reasonable basis for that decision exists.<sup>6</sup> The Commission will reverse a franchising authority's rate decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules. If the Commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.

4. An operator that wants to increase its BST rate has the burden of demonstrating that the increase is in conformance with the Commission's rules.<sup>7</sup> In determining whether the operator's rates conform with our rules, a franchising authority may direct the operator to provide supporting information.<sup>8</sup> After reviewing an operator's rate forms and any other additional information submitted, the franchising authority may approve the operator's rate increases or issue a written decision explaining why the operator's rates are not reasonable.<sup>9</sup> If the franchising authority determines that the operator's proposed rates exceed the maximum permitted rate ("MPR") as determined by the Commission's rules, it may prescribe a rate different from the proposed rate or order refunds, provided that it explains why the operator's rate or rates are unreasonable and the prescribed rate is reasonable.<sup>10</sup>

5. AT&T filed Form 1240s and FCC Form 1205s for 109 communities on March 1, 2001<sup>11</sup> and March 29, 2001,<sup>12</sup> respectively. These filings were separately docketed. Because the issues involved in the separate proceedings were the same, they were consolidated by DTE for administrative efficiency. Public and evidentiary hearings were held and interested parties were allowed to file comments. On February 28, 2002, DTE issued a rate order that rejected AT&T's Form 1240s for 96 of the 109 communities because of its treatment of the true-up adjustment, which was used to compute proposed BST programming and equipment and installation rates.<sup>13</sup> The order concluded that operators have discretion to pass along an amount less than the entire true-up to subscribers during the Projected Period."<sup>14</sup> However, the order also concluded that operators can not claim the entire true-up and include it in the MPR but not pass it through to subscribers.

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<sup>4</sup> 47 U.S.C. § 543(b)(1); 47 C.F.R. § 76.922.

<sup>5</sup> 47 U.S.C. § 543(b)(5)(B); 47 C.F.R. § 76.944.

<sup>6</sup> *Implementation of Sections of the Cable Television Consumer Protection and Competition Act, Report and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 5631 (1993) ("Rate Order"); *Third Reconsideration Order*, 9 FCC Rcd 4316, 4346 (1994).

<sup>7</sup> 47 C.F.R. § 76.937(a).

<sup>8</sup> *Rate Order* at 5718.

<sup>9</sup> 47 C.F.R. § 76.936; see *Ultracom of Marple Inc.*, 10 FCC Rcd 6640, 6641-42 (1995).

<sup>10</sup> See *Century Cable of Southern California*, 11 FCC Rcd 501 (1995); *TCL of Iowa, Inc.*, 13 FCC Rcd 12020 (1998).

<sup>11</sup> Cable Division Docket CTV 01-1.

<sup>12</sup> Cable Division Docket CTV 01-3.

<sup>13</sup> For the communities involved, refer to Exhibit B of DTE's opposition. AT&T's appeal includes all communities whose rates were reviewed by DTE although Form 1240s for thirteen of the communities were approved. See DTE opposition at 1, n. 2.

<sup>14</sup> DTE Order at 9.

### III. DISCUSSION

6. Form 1240 provides operators an annual adjustment methodology that includes projections of reasonably certain and quantifiable cost changes in its rate computation.<sup>15</sup> In a subsequent filing, the operator trues-up any disparities between those projections and the actual cost changes experienced, calculates interest on the disparity, and adjusts its new rates accordingly.<sup>16</sup> If this true-up adjustment shows there were undercharges, the operator may elect to defer recovery, but section 76.922(e)(3)(iii) of the Commission's rules provides that interest will cease to accrue as of the date the operator is entitled to make the annual rate adjustment.<sup>17</sup>

7. An operator computes the true-up adjustment by capturing actual costs on Module F of Form 1240 for the same rate segments it had used to project its MPR on Module I of its previous rate form. Then, using Module H on Form 1240, the operator compares the revenue permitted during the true-up period with the revenue collected during the true-up period. The difference is the true-up adjustment. The adjustment computed using Module F is subject to interest.<sup>18</sup>

8. AT&T's true-up adjustment (the Total True-Up Adjustment (from Line H13)) showed an undercharge, and AT&T entered the full amount of the adjustment on Line H14 ("Amount of True-Up Adjustment Claimed For This Projected Period"). However, AT&T's operator-selected rate was less than the true-up adjustment claimed on Line H14. Because the operator-selected rate was less than the Line H14 true-up adjustment, DTE found that AT&T had not passed the true-up adjustment claimed on Line H14 completely through to subscribers, as DTE stated, is required by the Form 1240 instruction for Line H14.<sup>19</sup> According to DTE, because the Line H14 amount must be entered on Module F on the next rate form, it concluded that AT&T would be truing-up these same undercharges a second time in its next rate filing.<sup>20</sup> AT&T was ordered by DTE to revise its Form 1240s to remove the excessive true-up adjustment from Line H14, record it on Line H15, and reduce the projected period MPR accordingly, rather than by raising its subscriber rate.<sup>21</sup>

9. AT&T argues in its appeal of the local rate order that it has the discretion to charge subscribers the MPR or something less. AT&T alleges that DTE's position is at "odds with the customary chronology for completing the Form 1240."<sup>22</sup> AT&T further argues that DTE's order requires cable operators to revise the standard chronology for the Form 1240 by completing module H (where it claims some or all of its true-up) before completing module I (where it decides whether to set its operator selected rate below its MPR) so that Lines I9 and I10 have the same amount entered.<sup>23</sup>

10. In opposition, DTE argues that its order should not be overturned because the Commission does not conduct *de novo* reviews of rate orders issued by franchising authorities and should defer to a local authority's decisions if there is a reasonable basis for the decision. DTE also argues that only the actual amount to be passed on to subscribers in higher rates can be placed on Line H14 (Amount of True-Up Adjustment Claimed for This Projected Period) of Form 1240, which "provides cable operators with discretion to delay rate increases without losing the ability to collect unclaimed true-up in

<sup>15</sup> Form 1240 implements the Commission's rules governing the annual rate adjustment methodology.

<sup>16</sup> 47 C.F.R. § 76.922(e)(3)(iii). Likewise, if the operator overestimated its cost changes, it must reduce future rates to reflect the accrued amount of the overcharge plus interest.

<sup>17</sup> *Id.*

<sup>18</sup> This computation is made using Lines H1-H4 of Form 1240.

<sup>19</sup> DTE Order at 7.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 10.

<sup>22</sup> Appeal at 3.

<sup>23</sup> *Id.*

future years.”<sup>24</sup> AT&T replies that DTE is claiming that an operator can claim a positive true-up on Line H14 only if the MPR on Line I9 matches the operator-selected rate on Line I10. However, there is no such requirement. DTE’s position would encourage cable operators to take larger increases sooner than they might otherwise.

11. In *CoxCom, Inc. d/b/a Cox Communications New England*,<sup>25</sup> we addressed these same issues. In *CoxCom*, the Cable Services Bureau, now the Media Bureau (“Bureau”), concluded that there was no reasonable basis for DTE’s decision that the cable operator had improperly completed Form 1240 because an operator has discretion whether to pass through unrecovered accrued costs reflected in the true-up adjustment and discretion whether to recover amounts included in other rate segments when setting its subscriber rates.<sup>26</sup> The Bureau explicitly rejected DTE’s assumption that true-up adjustments have not been “passed through” just because the MPR exceeds the actual rate charged subscribers.<sup>27</sup> The Bureau stated that the regulatory restrictions on setting subscriber rates prohibit the rates from exceeding the MPR, but they do not require the operator to raise its rates to the MPR.<sup>28</sup> The Bureau further stated that DTE’s interpretation would likely result in a cable operator’s increasing its rates, which could theoretically result in a lower true-up, but not necessarily lower rates for subscribers.<sup>29</sup> Thus, the Bureau concluded that DTE’s decision was not consistent with the Cable Act and reversed and remanded DTE’s decision. Based on *CoxCom*, we find that DTE wrongly concluded that cable operators have no discretion to charge subscribers an amount less than the maximum MPR. DTE’s decision was inconsistent with Commission and Bureau precedent. We therefore grant AT&T’s appeal.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that the local rate appeal filed by MediaOne of Enterprises, Inc., MediaOne of Enterprises, Inc., MediaOne Brockton, Inc., MediaOne of Milton, Inc., MediaOne of Needham, Inc., MediaOne Ohio, Inc., MediaOne of Southern New England, Inc., MediaOne of Virginia, Inc., and MediaOne of Western New England, Inc. d/b/a AT&T Broadband on March 29, 2002 **IS GRANTED**.

13. **IT IS FURTHER ORDERED** that the Massachusetts Department of Telecommunications and Energy’s local rate order, **IS REMANDED** for further consideration consistent with this Memorandum and Opinion.

FEDERAL COMMUNICATIONS COMMISSION

John B. Norton  
Deputy Chief, Policy Division  
Media Bureau

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<sup>24</sup> Opposition at 4.

<sup>25</sup> 17 FCC Rcd 7931 (2002), *Application for Review Denied*, 2003 WL 1738977 (FCC 2003).

<sup>26</sup> *Id.* at 7935.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 7936.